

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Hon. Hugh B. Scott

06CR327A

v.

**Report
&
Recommendation**

Bob Bishop,

Defendant.

The defendant has filed an omnibus motion seeking the following relief: an audibility hearing regarding certain recordings; a motion to suppress an identification; a motion to dismiss based upon a violation of the Interstate Agreement on Detainers; a Bill of Particulars; disclosure of the identities of informants; discovery; disclosure of Brady material, disclosure of material under Rules 404, 608 and 609; Jencks Act material; active counsel participation in *voir dire*; ability to voir dire the government's expert outside the presence of the jury; production of grand jury transcripts; production of rough notes and production of government summaries.¹

The motion to suppress the identification and to dismiss based upon a violation of the Interstate Agreement on Detainers Act appear to have been abandoned. The government has represented that there is no identification procedure to be suppressed. (Docket No. 14 at page 4).

¹ All non-dispositive issues are resolved in a separate Decision & Order.

The defendant has not disputed this representation. Similarly, at oral argument, the defendant has not represented to the Court that, upon further investigation, facts exist to support a claim that there has been a violation of the Interstate Agreement of Detainers Act in this case.

Conclusion

Based on the above, it is recommended that these motions be denied at this time.

Pursuant to 28 USC §636(b)(1), it is hereby ordered that this Report & Recommendation be filed with the Clerk of the Court and that the Clerk shall send a copy of the Report & Recommendation to all parties.

ANY OBJECTIONS to this Report & Recommendation must be filed with the Clerk of this Court within ten(10) days after receipt of a copy of this Report & Recommendation in accordance with 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, as well as WDNY Local Rule 72(a)(3).

FAILURE TO FILE OBJECTIONS TO THIS REPORT & RECOMMENDATION WITHIN THE SPECIFIED TIME, OR TO REQUEST AN EXTENSION OF TIME TO FILE OBJECTIONS, WAIVES THE RIGHT TO APPEAL ANY SUBSEQUENT ORDER BY THE DISTRICT COURT ADOPTING THE RECOMMENDATIONS CONTAINED HEREIN. Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed2d 435 (1985); F.D.I.C. v. Hillcrest Associates, 66 F.3d 566 (2d. Cir. 1995); Wesolak v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); see also 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, and WDNY Local Rule 72(a)(3).

Please also note that the District Court, on *de novo* review, will ordinarily refuse to

consider arguments, case law and/or evidentiary material which could have been, but was not, presented to the Magistrate Judge in the first instance. See Patterson-Leitch Co. Inc. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985 (1st Cir. 1988).

Finally, the parties are reminded that, pursuant to WDNY Local Rule 72.3(a)(3), "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." Failure to comply with the provisions of Rule 72.3(a)(3) may result in the District Court's refusal to consider the objection.

So Ordered.

/s/ *Maugh B. Scott*

United States Magistrate Judge
Western District of New York

Buffalo, New York
November 16, 2007